

May 30, 2024

Via ECF

The Honorable Edward R. Korman,
United States District Court for the Eastern District of New York,
225 Cadman Plaza East,
Brooklyn, New York 11201.

Re: *Patel v. Koninklijke Philips N.V., et al*, No. 21-cv-4606-ERK-MMH

Your Honor:

On behalf of Defendants, we write in response to Plaintiffs' May 29 letter informing the Court of a news article reporting that the SEC had "launched an investigation into Philips Respironics." (ECF No. 53 at 1.)

The reported existence of an investigation of an affiliate, not a defendant in this case, does not help Plaintiffs meet the elements of their securities fraud claims, including scienter and a material misrepresentation. As numerous courts have held, "[t]he mere existence of an SEC investigation [would] not suggest that any of the allegedly false statements were actually false and it [would] not render [the alleged mis]statements . . . material nor [would] it add an inference of scienter." *In re Hutchinson Tech. Sec. Litig.*, 536 F.3d 952, 962 (8th Cir. 2008); *see also, e.g., Lipow v. Net1 UEPS Techs.*, 131 F. Supp. 3d 144, 167 (S.D.N.Y. 2015) ("[T]he government investigations [which included an SEC investigation] cannot bolster allegations of scienter that do not exist, and, as currently plead[ed], the government investigations are just that, investigations."); *In re Manulife Fin. Corp. Sec. Litig.*, 276 F.R.D. 87, 102 (S.D.N.Y. 2011) ("Securities regulators are obligated to examine the behavior of public corporations, and the fact that a regulator is fulfilling this role cannot be sufficient to allege scienter."); *In re Danimer Sci., Inc. Sec. Litig.*, 2023 WL 6385642, at *14 (E.D.N.Y. Sept. 30, 2023) (rejecting theory that existence of SEC "investigation[] [is] probative of conscious misbehavior or recklessness by Defendants").

For these reasons and those previously stated, the Court should grant Defendants' motions to dismiss with prejudice.

Respectfully submitted,

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/s/ William B. Monahan
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/s/ Jenny R. Kramer
Jenny R. Kramer

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Counsel for Defendant John Frank

cc: Counsel of Record (via e-mail and ECF)
Magistrate Judge Marcia M. Henry (via ECF)